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SEP 20 2007

In re Application of : **OFFICE OF PETITIONS**
Stephen R. Basco et al :
Application No. 09/991,563 : DECISION ON PETITION
Filed: November 20, 2001 :
Attorney Docket No. :
1028-009US01 :

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed January 9, 2007, to revive the above-identified application.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)." This is not a final agency action within the meaning of 5 U.S.C. § 704.

The application became abandoned for failure to reply in a timely manner to the non-final Office action mailed May 6, 2005, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the application became abandoned on August 7, 2005. A Notice of Abandonment was mailed on April 18, 2006.

A grantable petition under 37 CFR 1.137(b) must be accompanied by: (1) the required reply, unless previously filed; (2) the petition fee as set forth in 37 CFR 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional; and (4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required by 37 CFR 1.137(d). Where there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137 was unintentional, the Director may require additional information. See MPEP 711.03(c)(II)(C) and (D).

The instant petition lacks item (3). In this regard, where an application has been abandoned for more than one year, the Office

requires that the statement of unintentional delay track the language in 37 CFR 1.137(b)(3), which states: "The entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional." The petition presently does not have the statement required by the rule and is required to revive this application.

Further, it appears that petitioner does not wish to pursue prosecution in this application, but to rather revive this application for continuity purposes only with Application No. 11/261,285, filed October 28, 2005. Accordingly, any renewed petition should clearly indicate this intent.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. See In re Application of S, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$510 extension of time fee submitted with the petition on January 9, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be refunded to petitioner's credit card in due course.

Any renewed petition may be addressed as follows:

By Mail: Mail Stop PETITION
 Commissioner for Patents
 P. O. Box 1450
 Alexandria, VA 22313-1450

By hand: U. S. Patent and Trademark Office
 Customer Service Window, Mail Stop Petitions
 Randolph Building
 401 Dulany Street
 Alexandria, VA 22314

The centralized facsimile number is (571) 273-8300.

Correspondence regarding this decision may also be filed through the electronic filing system of the USPTO.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3218.


Frances Hicks
Petitions Examiner
Office of Petitions